

THE FOURTH SCHEDULE—continued.

No. 149.

### ORDER CONFIRMING SALE OF LAND, &c.

Section 312 of the Code of Civil Procedure.

**IN THE COURT OF**

Civil Suit, No.

of 18

**AT**

A. B. of

against

C. D. of

WHEREAS the following land [or immoveable property] was on the                      day of 18                      sold by the Bailiff of this Court in execution of the decree in this suit; and whereas                      days have elapsed and no application has been made [or objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this                      day of                      18                      18

Schedule.

L. S.

*Judge.*

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF                                  AT  
Civil Suit, No.                                  of 18  
*A. B.* of  
*against*  
*C. D.* of

THIS is to certify that \_\_\_\_\_ has been declared the purchaser at  
sale by public auction on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ of \_\_\_\_\_

in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.  
GIVEN under my hand and the seal of the Court, this                      day of                      18

L. S.

*Judge.*

No. 151.

## ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF                      Civil Suit, No.                      AT  
of 18  
*A. B.* of  
*against*  
*C. D.* of

TO THE BAILIFF OF THE COURT.

WHEREAS \_\_\_\_\_ has become the certified purchaser of \_\_\_\_\_ at a sale in execution of the decree in Civil Suit No. \_\_\_\_\_ of 18 \_\_\_\_\_; and whereas such land is in the possession of \_\_\_\_\_, you are hereby ordered to put the said \_\_\_\_\_, the certified purchaser, as aforesaid, into possession of the said \_\_\_\_\_ and if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_

L. S.

*Judge.*

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF  
Civil Suit, No. \_\_\_\_\_  
AT \_\_\_\_\_  
of 18 \_\_\_\_\_.  
A. B. of \_\_\_\_\_  
against \_\_\_\_\_  
C. D. of \_\_\_\_\_  
Collector of \_\_\_\_\_

Sir, In answer to your communication No. \_\_\_\_\_, dated \_\_\_\_\_, representing that the sale in execution of the decree in this suit of \_\_\_\_\_ and, lying within your district,

## THE FOURTH SCHEDULE—continued.

paying revenue to Government, is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,  
Sir,  
Your obedient Servant,

L. S.

Judge.

No. 153.

## ORDER FOR COMMITTAL FOR RESISTING, &amp;c., EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.

(Title.)

To

WHEREAS it appears to the Court that  
has without just cause resisted [or obstructed] the execution of the decree of the Court passed against  
on the day of 18, in Civil Suit, No. of 18,  
whereby certain land or immoveable property was adjudged to be committed to custody for a period of  
that the said days.

GIVEN under my hand and the seal of the Court, this day of 18.

L. S.

Judge.

No. 154.

## WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18  
Miscellaneous, No. of 18  
A. B. of  
against  
C. D. of

## TO THE BAILIFF OF THE COURT.

WHEREAS

Principal	.	.	.	.			
Interest	.	.	.	.			
Costs	.	.	.	.			
Execution	.	.	.	.			
TOTAL	.	.	.	.			

was adjudged by a decree of the Court, in  
No. of 18, dated 18, to  
pay to the plaintiff the sum of Rs. as noted in the  
margin, and whereas the said sum of Rs. has  
not been paid to the said plaintiff in satisfaction of the  
said decree, these are to command you to arrest the said  
defendant, and unless the said defendant shall pay to you  
the said sum of Rs. together with Rs.  
for the costs of executing this process, to bring the said  
defendant before the Court with all convenient speed.  
You are further commanded to return this warrant on or  
before the day of 18, with an en-  
dorsement certifying the day and manner in which it has

been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18.

L. S.

Judge.

No. 155.

## NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF

B. No.

A. B. v. C. D.

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to  
satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. X. Z.,  
the Plaintiff's Pleader,  
Z.,  
Defendant's Pleader.

4 m 3



## THE FOURTH SCHEDULE—continued.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

of 18

AT

A. B. of

against

C. D. of

To

WHEREAS the evidence of is required by the  
 in the above suit; and whereas you are requested to take the examination on interro-  
 gatories [or viva voce] of such witnesses and you are hereby appointed a Commissioner for  
 that purpose, and you are further requested to make return of such examination so soon as it may be taken  
 [process to require the attendance of the witness will be issued by this Court on your application].\*

GIVEN under my hand and the seal of the Court, this day of

L. S.

Judge.

\* Not necessary where the commission goes to another Court.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

of 18

AT

A. B. of

against

C. D. of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for  
 should be issued; you are hereby appointed  
 Commissioner for the purpose of [process to compel  
 the attendance before you of any witnesses, or for the production of any documents which you may desire to  
 examine or inspect, will be issued by this Court on your application].\*

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

\* Not necessary where the commission goes to another Court.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

of 18

AT

A. B. of

against

C. D. of

To THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit,  
 has proved to the satisfaction of the Court that there is probable cause for believing that the defendant  
 is about to , these are to command you to take  
 the said into custody, and to bring  
 before the Court, in order that he may show cause why he should not furnish security to the  
 amount of rupees for personal appearance before the Court, until such time as the said  
 suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed  
 against in the suit.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

## THE FOURTH SCHEDULE—continued.

No. 159.

## ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B. of  
against  
C. D. of

To

WHEREAS

plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit; or if judgment be given against the defendant, until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 160.

## ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B. of  
against  
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS the plaintiff in the above suit has proved to the satisfaction of the Court that the defendant in the above suit these are to command you to call upon the said defendant on or before the day of either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against the defendant, or to appear and show cause why should not furnish security; and you are further ordered to attach the said defendant and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 161.

## ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF

CIVIL SUIT, No.

AT

of 18

A. B. of  
against  
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS the plaintiff in this suit, has applied to the Court to call upon the defendant, to furnish security to fulfil any decree that may be passed against the defendant in the suit, and whereas the Court has called upon the said defendant to furnish such security which has failed to do; these are to command you to attach the property of the said defendant and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

THE FOURTH SCHEDULE—*continued.*

No. 162.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B. of

against

C. D. of

To

Defendant.

be, and you are hereby,

It is ordered that you the said  
prohibited and restrained until the further order of this Court from receiving from  
the following property in the possession of the said  
is to say to which the defendant is entitled, subject to any claim of the said  
and the said is hereby prohibited and restrained, until the further order  
of this Court, from delivering the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 163.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B. of

against

C. D. of

To

Defendant.

It is ordered that you the said  
be, and you are hereby, prohibited and restrained, until the  
further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift  
or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase,  
gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .  
*Schedule.*

L. S.

Judge.

No. 164.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS,  
OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B. of

against

C. D. of

To

be, and he is hereby, prohibited

It is ordered that the defendant  
and restrained, until the further order of this Court, from receiving from  
the [money now in hands belonging to the said defendant  
or debts, as the case may be, describing them] and that the said  
hereby prohibited and restrained, until the further order of this Court, from making  
payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.



## THE FOURTH SCHEDULE—continued.

No. 165.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.  
Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT  
Civil Suit, No. of 18 .  
A. B. of  
against  
C. D. of

To Defendant and to

Manager of Company.  
It is ordered that , the defendant,  
be, and hereby, prohibited and restrained, until the further  
order of the Court, from making any transfer of shares  
being in the aforesaid Company, or from  
receiving payment of any dividends thereof, and you Manager  
of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making  
any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 166.

## TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

Upon motion made unto this Court by , Pleader of [or Counsel for] the plaintiff, A. B.,  
and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this cause  
on the day of , or the written statement of the said plaintiff filed on the  
day of ] and upon hearing the evidence of and  
in support thereof, [if after notice and defendant not appearing: add,  
and also the evidence of as to service of notice of this motion upon  
the defendant, C. D.] This Court doth order that an injunction be awarded to restrain the defendant, C. D.,  
his servants, workmen and agents from pulling down, or suffering to be pulled down, the house in the plaint  
in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence  
at the hearing of this motion mentioned] being No. 9, Oilmongers Street, Hindupur, in the Taluq of  
and from selling the materials whereof the said house is composed, until the hearing of this cause  
or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the  
order may run thus:—] to restrain the defendants

and from parting with out of the custody of them or any of them  
or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the  
day of , &c., mentioned in the plaintiff's plaint [or petition] and the evidence  
heard at this motion until the hearing of this cause, or until the further order of this Court.

[In Copyright cases] to restrain the defendant, C. D.,  
his servants, agents or workmen from printing, publishing, or vending a book, called  
, or any part thereof, until the, &c.

[Where part only of a book is to be restrained] to restrain the  
defendant, C. D., his servants, agents or workmen from printing, publishing, selling, or otherwise disposing  
of such parts of the book in the plaint [or petition and evidence, &c.] mentioned to have been published by  
the defendant as hereinafter specified, namely, that part of the said book which is entitled and  
also that part which is entitled [or which is contained  
in page to page both inclusive] until  
the, &c.

[In Patent cases] to restrain the defendant, C. D., his agents,  
servants and workmen, from making or vending any perforated bricks (or as the case may be) upon  
the principle of the inventions in the plaintiff's plaint [or petition, &c., or written statement, &c.] mentioned,  
belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the  
plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same  
inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, &c.

[In cases of Trademarks] to restrain the defendant, C. D., his  
servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or  
blackening [or, as the case may be] described as or purporting to be blackening manufactured by the plaintiff,  
A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, &c.] men-  
tioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the  
composition or blackening sold by the defendant to be the same as the composition or blackening manufactured  
and sold by the plaintiff, A. B., and from using trade-cards so contrived or expressed as to represent that any  
composition or blackening sold or proposed to be sold by the defendant is the same as the composition or blackening  
manufactured or sold by the plaintiff, A. B., until the, &c.

## THE FOURTH SCHEDULE—continued.

[To restrain a partner from in any way interfering in the business]

to restrain the defendant, *C. D.*, his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security, in the name of the partnership-firm of *B. & D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B. & D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking, until the, &c.

No. 167.

## NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF

AT

*A. B.* of

against

*C. D.* of

TAKE notice that I, *A. B.*, intend to apply at the sitting of the Court at \_\_\_\_\_ aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in \_\_\_\_\_, to recover damages for the breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce or, as the case may be].

Dated this \_\_\_\_\_ day of \_\_\_\_\_

18 .

To *C. D.**A. B.*

[*N. B.*—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

No. 168.

## APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. \_\_\_\_\_

of 18 .

*A. B.* of

against

*C. D.* of

To

WHEREAS \_\_\_\_\_ has been attached in execution of a decree passed in the above suit on the \_\_\_\_\_ day of \_\_\_\_\_ 18 ., in favour of \_\_\_\_\_; you are hereby (subject to your giving security to the satisfaction of the Registrar) appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on \_\_\_\_\_. You will be entitled to remuneration at the rate of \_\_\_\_\_ per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

L. S.

Judge.

No. 169.

## BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. \_\_\_\_\_

of

*A. B.* of

against

*C. D.* of

KNOW all men by these presents, that we, *I. J.* of, &c., and *K. L.* of, &c., and *M. N.* of, &c., are jointly and severally bound to *G. H.*, Registrar of the Court of \_\_\_\_\_ in Rs. \_\_\_\_\_, to be paid to the said *G. H.* or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

18 .

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of [here insert object of suit].



## THE FOURTH SCHEDULE—continued.

And whereas the said *I. J.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property, and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the moveable property of the said *O. P.* [or, as may be] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

*I. J.**K. L.**M. N.*

Signed and delivered by the above-bounden in the presence of

NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

No. 170.

## ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(Title.)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18, or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 171.

## ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

(Title.)

Upon reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of who is to make

his award in writing and submit the same to this Court, together with all proceedings, depositions and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrators shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.



## THE FOURTH SCHEDULE—continued.

No. 172.

## SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF

AT

Plaintiff.

Defendant.

To

[Here enter the defendant's name, description and address.]

WHEREAS [here enter the plaintiff's name, description and address] has instituted a suit in this Court against you under Chapter XXXIX of the Code of Civil Procedure for Rs. principal and interest [or Rs. balance of principal and interest] due to him as the payee [or endorsee] of a bill of exchange [or hundi or promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [here state the sum claimed] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[Here copy the bill of exchange, hundi or promissory note, and all endorsements upon it.]

No. 173.

## MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

## MEMORANDUM OF APPEAL.

(Name, &amp;c., as in Register.) Plaintiff—Appellant.

(Name, &amp;c., as in Register.) Defendant—Respondent.

[Name of Appellant] [plaintiff or defendant] above-named appeals to the High Court at [or District Court at  
dated the day of , as the case may be] against the decree of in the above suit  
objection.] for the following reasons, namely, [here state the grounds of

THE FOURTH SCHEDULE—continued.

[illegible]

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THE FOURTH SCHEDULE—*continued.*

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.  
Section 553 of the Code of Civil Procedure.

IN THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_  
 , Appellant, v. \_\_\_\_\_, Respondent.  
 APPEAL from the \_\_\_\_\_ of the Court of \_\_\_\_\_  
 dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
 Respondent.

To  
 TAKE notice that an appeal from the decree of  
 in this case has been presented by  
 and registered in this Court, and that the  
 day of \_\_\_\_\_ 18 has been fixed by this Court for the hearing of this appeal.  
 If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to  
 act for you in this appeal, it will be heard and decided *ex parte* in your absence.  
 GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

L. S.

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_  
 , Appellant, v. \_\_\_\_\_, Respondent.  
 APPEAL from the \_\_\_\_\_ of the Court of \_\_\_\_\_  
 day of \_\_\_\_\_ 18 dated the \_\_\_\_\_  
 Memorandum of Appeal.

Plaintiff [or defendant] above-named appeals to the \_\_\_\_\_ Court at \_\_\_\_\_  
 against the decree of \_\_\_\_\_, Plaintiff.  
 day of \_\_\_\_\_ 18 , for the following reasons, namely; \_\_\_\_\_, Defendant.  
 in the above suit, dated the \_\_\_\_\_

[here state the reasons]  
 This appeal coming on for hearing on the \_\_\_\_\_ day of \_\_\_\_\_ 18 ,  
 before \_\_\_\_\_, in the presence of \_\_\_\_\_  
 for the Appellant, and of \_\_\_\_\_ for the Respondent, it is ordered—

[here state the relief granted]  
 The costs of this appeal, amounting to \_\_\_\_\_, are to be paid by \_\_\_\_\_  
 The costs of the original suit are to be paid by \_\_\_\_\_  
 GIVEN under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

L. S.

Judge.





## THE FOURTH SCHEDULE—concluded.

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_, Defendant.

To  
 TAKE notice that \_\_\_\_\_ has applied to this Court for a review  
 of its judgment passed on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ in the above case.  
 The \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ is fixed for you to show cause why the Court should not  
 grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

L. S.

Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_  
 A. B. of  
 against  
 C. D. of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, A. B. [or C. D.], have hitherto employed as my pleader G. H. of  
 in the above-mentioned cause, but that I have ceased to employ him, and that my present  
 pleader is J. K. of \_\_\_\_\_

A. B. [or C. D.]

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE OR ORDER OF COURT, OR ANY  
 OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [place of office] from ten till four, except on [here insert  
 the day on which the office will be closed], when the office will be closed at one.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 17th March, 1882, and is hereby promulgated for general information:—

ACT No. XV OF 1882.

THE PRESIDENCY SMALL CAUSE  
COURTS ACT, 1882.

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*An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

#### CHAPTER I.

##### PRELIMINARY.

1. This Act may be called  
Short title. "The Presidency Small Cause Courts Act, 1882"; and it shall come into force  
Commencement. on the first day of July, 1882.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any person under any decree passed before that day.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the said day shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

3. In Act No. XXIII of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII. 1847," the words and figures "The Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners" the words "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX" the words and figures "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

#### CHAPTER II.

##### CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the under superintendence, superintendence of the High &c., of High Court. Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor Appointment, suspension and removal of Judges. General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

All barristers who when this Act comes into force are, or are acting as, Judges of the Small Cause Court shall, for the purposes of this section, be deemed to be advocates of a High Court.

- Rank and precedence of Judges. 8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

9. Except as otherwise provided by this Power to make rules. or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

### CHAPTER III.

#### LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

### CHAPTER IV.

#### JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.



*Explanation II.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Suits in which Court has no jurisdiction. 19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(d) suits for the recovery of immoveable property;

(e) suits for the partition of immoveable property;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property;

(g) suits for the determination of any other right to or interest in immoveable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(m) suits for compensation in respect of collisions on the high seas;

(n) suits for compensation for the infringement of a patent, copyright or trademark;

(o) suits for a dissolution of partnership or for an account of partnership-transactions;

(p) suits for an account of property and its due administration under the decree of the Court;

(q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(s) suits for declaratory decrees;

(t) suits for possession of a hereditary office;

(u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(v) suits on any judgment of a High Court;

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

## CHAPTER V.

### PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall,

so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act:

Provided that the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court

may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

32. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

34. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

## CHAPTER VI.

### NEW TRIALS AND RE-HEARING.

37. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

38. Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard in the High Court.

Such application shall be supported by affidavits, and, in case the applicant has appeared in the Small Cause Court by advocate, vakil, attorney or pleader, by a certificate from such advocate, vakil, attorney or pleader that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

39. On the day fixed under section thirty-eight or on any other day to which the re-hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to re-hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree or order under this section.

40. Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court or may, in the



discretion of the High Court, be remitted to the Small Cause Court for execution.

#### CHAPTER VII.

##### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-one, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other

person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

47. Whenever on an application being made under section forty-one the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-three.

Nothing contained in section twenty-two shall apply to suits under this section.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

49. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

## CHAPTER VIII.

### DISTRESSES.

50. This chapter extends to every place within the local extent of the local limits of the ordinary original civil jurisdictions of the High Courts of judicature at Fort William, Madras and Bombay. But nothing contained in this chapter applies—

- (a) to any rent due to Government;
- (b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-three.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B), contained in the same schedule addressed to any one of such bailiffs.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

55. Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:

Provided that he shall not enter or break open the door of any room appropriated for the *zanānā* or residence of women, which by the usage of the country is considered private.

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

- (a) things in actual use; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
- (c) the debtor's necessary wearing apparel; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

59. On seizing any property under section fifty-seven the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such

seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. In any case under section sixty or section sixty-one the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

63. In any case under section sixty or section sixty-one, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order

passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.



67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

68. No distress shall be levied for arrears of rent, except under the provisions of this chapter;

And any person, except a bailiff appointed under section fifty-one, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

#### CHAPTER IX.

##### REFERENCES TO HIGH COURT.

69. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

70. When judgment is given under section sixty-nine contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

#### CHAPTER X.

##### FEES AND COSTS.

Institution-fee.

71. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section thirty-eight or section forty-one; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section twenty.

72. The fees specified in the third and fourth columns of the fourth Schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-one made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections seventy-one and seventy-two.

75. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-one and seventy-two:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or pro-

ceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870, saved.

#### CHAPTER XI.

##### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

81. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

#### CHAPTER XII.

##### CONTEMPT OF COURT.

83. When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

85. If the Court considers that a person accused of any offence referred to in section eighty-three and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section eighty-three, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

86. When the Court has, under section eighty-three or section eighty-five, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-three or section eighty-five.

88. Any person deeming himself aggrieved by an order under section eighty-three or section eighty-seven may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

### CHAPTER XIII.

#### MISCELLANEOUS.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

90. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

91. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

### THE FIRST SCHEDULE.

(See section 2.)

#### ENACTMENTS REPEALED.

##### A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

##### B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I of 1875 ...	To regulate Distresses for Rents in the Presidency towns.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

##### C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.



## THE SECOND SCHEDULE.

(See section 23.)

## PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY : Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, clause (b), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44 rule a.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (e), section 55, section 57, clause (b), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Sending for Records and Production, &amp;c., of Documents, sections 137 (except paragraph 2), 138, 140 (except the proviso and the last six words), 141 (except the third sentence), 142, 143 and 145.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

THE SECOND SCHEDULE—*contd.*

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.

CHAPTER XXXV.—Interlocutory orders, sections 498, 499, 500 and 502.

CHAPTER XXXVI.—Appointment of Receivers, section 503.

CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause b, as relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

## THE THIRD SCHEDULE.

## FORMS.

## A.

[See section 53.]

*In the Small Cause Court for**A. B.* (Plaintiff),*versus**C. D.* (Defendant).

*A. B.* of \_\_\_\_\_, in the town of \_\_\_\_\_, maketh oath [or affirms] and saith that *C. D.* of \_\_\_\_\_, is justly indebted to \_\_\_\_\_ in the sum of Rs. \_\_\_\_\_ for arrears of rent of the house and premises No. \_\_\_\_\_, situated at \_\_\_\_\_, in the town of \_\_\_\_\_, due for \_\_\_\_\_ months, to wit from \_\_\_\_\_ to \_\_\_\_\_, at the rate of Rs. \_\_\_\_\_ per mensem.

Sworn [or affirmed] before me the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

*Judge [or Registrar].*

## B.

[See section 54.]

*In the Small Cause Court for*

## FORM OF WARRANT.

I hereby direct you to distrain the moveable property of *C. D.*, on the house and premises situate at No. \_\_\_\_\_, in the town of \_\_\_\_\_, for the sum of \_\_\_\_\_ Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated \_\_\_\_\_ day of \_\_\_\_\_

*(Signed and sealed).**To E. F., Bailiff and Appraiser.*

## C.

[See section 59.]

*In the Small Cause Court for*

## FORM OF INVENTORY AND NOTICE.

*(State particulars of property seized).*

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of \_\_\_\_\_ Rs., being the amount of \_\_\_\_\_ months' rent due to *A. B.* at \_\_\_\_\_ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

*To C. D.**(Signed) E. F.,  
Bailiff and Appraiser.*

## D.

[See section 64.]

*In the Small Cause Court for*

Take notice that we have appraised the moveable property seized on the \_\_\_\_\_ day of \_\_\_\_\_, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [or upon \_\_\_\_\_ on your behalf, as the case may be] under date the \_\_\_\_\_, and that the said property will be sold on the \_\_\_\_\_ [two clear days at least after the date of the notice] at \_\_\_\_\_ pursuant to the provisions of the said Act. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 188—.

*To C. D.**(Signed) E. F.,  
G. H.,  
Bailiffs and Appraisers.*

## E.

[See section 66.]

*In the Small Cause Court for*

## SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.		Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under 5	...	0 4 0	0 8 0	0 8 0	1 4 0
5 "	10	0 8 0	0 8 0	1 0 0	2 0 0
10 "	15	0 8 0	0 8 0	1 8 0	2 8 0
15 "	20	0 8 0	1 0 0	2 0 0	3 8 0
20 "	25	0 12 0	1 0 0	2 8 0	4 4 0
25 "	30	1 0 0	1 0 0	3 0 0	5 0 0
30 "	35	1 0 0	1 0 0	3 8 0	5 8 0
35 "	40	1 0 0	1 8 0	4 0 0	6 8 0
40 "	45	1 4 0	2 0 0	4 8 0	7 12 0
45 "	50	1 8 0	2 0 0	5 0 0	8 8 0
50 "	60	2 0 0	2 0 0	6 0 0	10 0 0
60 "	80	2 8 0	2 8 0	6 8 0	11 8 0
80 to 100	...	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	...	3 0 0	3 0 0	7 per centum	...

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

## THE FOURTH SCHEDULE.

(See section 72.)

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.





# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 25, 1882.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 10th March, 1882, and is hereby promulgated for general information:—

ACT No. XI OF 1882.

THE INDIAN TARIFF ACT, 1882.

### CONTENTS.

#### PREAMBLE.

#### SECTIONS.

1. Short title.  
Local extent.  
Commencement.
2. Repeal of Acts.  
Saving clause.
3. Duties specified in schedules to be levied.
4. Export of pepper from Cochin.
5. Duties on goods crossing frontiers of Foreign European Settlements in Presidency of Madras, of foreign territory.  
Power to declare territory foreign.
6. Excise-duty on spirit distilled in British India.
7. Duty on spirit, opium and salt when protected by a certificate.
8. Application of certain provisions as to duties and goods.
9. Power to cancel notifications.

SCHEDULE I.—ACTS REPEALED.

SCHEDULE II.—IMPORT TARIFF.

SCHEDULE III.—EXPORT TARIFF.

*An Act to amend the law relating to Customs Duties, and for other purposes.*

WHEREAS it is expedient to amend the law relating to the duties of customs on goods imported and ex-

ported by sea, and to provide for the levy of duties on goods crossing the frontier of certain Foreign European Settlements in India and of the territories of certain Native Chiefs and for fixing a maximum duty of excise on spirit manufactured in British India; It is hereby enacted as follows:—

1. This Act may be called "The Indian Tariff Act, 1882"  
Short title.  
It extends to the whole of British India except Aden;  
Local extent.  
and it shall come into force on the passing thereof.  
Commencement.
2. The Acts mentioned in the first schedule hereto annexed are repealed to the extent specified therein:  
Repeal of Acts.  
But all notifications published, and rules and orders made, under any of such Acts, and now in force, shall, so far as they are consistent herewith, be deemed to have been respectively published and made hereunder:  
Saving clause.  
All references made to the Indian Tariff Act, 1875, in Acts or Regulations passed before this Act comes into force, shall be deemed to be made to this Act:  
And nothing herein contained authorizes the levy of duties of customs on any article carried from one port in British India to another, except salt, opium and spirit.
3. There shall be levied and collected, in every port to which this Act applies, the duties specified in the second and third schedules hereto annexed.  
Duties specified in port to which this Act applies, the duties specified in the second and third schedules hereto annexed.
4. On all pepper exported by sea from the port of Cochin there shall be levied such duty not exceeding nine rupees per khandi as the Governor of Fort Saint George in Council from time to time determines; and at the close of each year, or as soon thereafter as may be convenient, the Customs-collector at the said port shall, after deducting the expenses of collection, pay the duty collected under this section to the Governments of Travancore and Cochin in such proportion and in such manner as the Governor of Fort Saint George in Council from time to time directs.  
Export of pepper from Cochin there shall be levied such duty not exceeding nine rupees per khandi as the Governor of Fort Saint George in Council from time to time determines;

5. Duties of customs shall be levied at the rates respectively prescribed in the second and third schedules hereto annexed on goods passing by land out of or into—

(1) Foreign European Settlements situate on the line of coast within the limits of the Presidency of Fort Saint George;

(2) any territory declared, under the power next hereinafter conferred, to be foreign territory.

Subject to the control of the Governor General in Council, the Governor of Fort St. George in Council and the Governor of Bombay in Council may, from time to time, by notification

Power to declare territory foreign. in the local official Gazette, respectively declare that the territory of any Native Chief, situate within, or bordering on, the territories respectively administered by such Governors, but not subject to the jurisdiction of the Courts and Civil authorities of such territories, shall be deemed, for the purposes of this section, to be foreign territory.

The Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare that the territory of any other Native Chief, shall be deemed, for the purposes of this section, to be foreign territory.

6. And whereas it is expedient that the duty of excise on spirit distilled in British India should bear a due proportion to the customs-duty on spirit imported into British India, it is hereby further enacted as follows:—

Subject to any general rules or special orders which the Governor General in Council may, from time to time, make in this behalf, the Local Government may, from time to time, by notification

in the local official Gazette, fix the duty of excise leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, at any rate not exceeding the rate fixed for imported spirit by the second schedule hereto annexed;

and all provisions now in force as to the levy of duty now chargeable on spirit shall apply to spirit upon which the duty declared under this section has not been paid.

In Act No. XVI of 1863, section one, for the words "calculated at ten" the words "not exceeding five" shall be substituted.

7. Spirit, opium and salt imported from any port

Duty on spirit, opium and salt when protected by a certificate.

in British India, and protected by the certificate of an officer empowered in that behalf by the Governor General in Council or the Local Government, are chargeable with only the amount, if any, by which the duty leviable thereon under the second schedule hereto annexed exceeds the duty shown by such certificate to have been already paid in respect thereof.

The amount, if any, paid to the Government as the price of such opium or salt is not duty within the meaning of this section.

8. So far as regards the Presidency of Fort St.

Application of certain provisions as to duties and goods.

George, the unrepealed provisions of Act No. VI of 1844, and so far as regards the Presidency of Bombay, the unrepealed provisions of Act No. XXIX of 1847, relating to the levy of duties and to dutiable goods, shall, *mutatis mutandis*, apply to duties levied and goods liable to duty under or by virtue of section five, clause (2).

9. All notifications published hereunder may be

Power to cancel notifications. cancelled by the authority publishing the same.

## SCHEDULE I.

### ACTS REPEALED.

Number and year.	Short Title.	Extent of Repeal.
XI of 1869	The Land Customs (Madras and Bombay) Act, 1869	So much as has not been repealed.
XVI of 1875	The Indian Tariff Act, 1875	Ditto.
XI of 1878	The Indian Arms Act, 1878	Section 8 and the second Schedule.

## SCHEDULE II.

### IMPORT TARIFF.

No.	Names of Articles.	Per	Tariff valuation.	Duty.
1	ARMS, AMMUNITION AND MILITARY STORES— Fire-arms and parts thereof—			Rs. As.
	1. Fire-arms other than pistols, for each	.....	.....	60 0
	2. Barrels for the same, whether single or double, for each	.....	.....	30 0
	3. Pistols, for each	.....	.....	15 0
	4. Barrels for the same, whether single or double, for each	.....	.....	10 0
	5. Springs used for fire-arms, for each	.....	.....	8 0
	6. Gunstocks, sights, blocks and rollers, for each	.....	.....	5 0
	7. Revolver-breeches, for each cartridge they will carry	.....	.....	2 8

No.	Names of Articles.	Per	Tariff valuation.	Rate of Duty.	
				Rs.	As.
	8. Extractors, nippers, heel-plates, pins, screws, tangs, bolts, thumb-pieces, triggers, trigger-guards, hammers, pistons, plates, and all other parts of a fire-arm not herein otherwise provided for, and all tools used for cleaning or putting together or loading the same, for each ...	.....	.....	1	8
	9. Machines for making or loading or closing cartridges, for each ...	.....	.....	10	0
	10. Machines for capping cartridges, for each ...	.....	.....	2	8
	<i>Exception I.</i> —Articles falling under the 5th, 6th, 8th, 9th, or 10th head of the above list, when they appertain to a fire-arm falling under the 1st or 3rd head, and are fitted into the same case with such fire-arm, are free.				
	<i>Exception II.</i> —Arms forming part of the regular equipment of an officer entitled to wear diplomatic, military or police uniform, and a revolver or a pair of pistols accompanying a military officer, are free.				
	<i>Proviso 1.</i> —No duty in excess of ten per cent. <i>ad valorem</i> shall be levied upon any of the articles mentioned in the above list when they are imported in reasonable quantity, for his own private use, by any person lawfully entitled to possess the same.				
	<i>Proviso 2.</i> —When any articles which have been otherwise imported, and upon which duty has been levied or is leviable under this number, are purchased retail from the importer by a person lawfully entitled as aforesaid, in reasonable quantity for his own private use, the importer may apply to the Customs-collector for a refund or remission (as the case may be) of so much of the duty thereon as is in excess of ten per cent. <i>ad valorem</i> ; and if such collector is satisfied as to the identity of the articles, and that such importer is in other respects entitled to such refund or remission, he shall grant the same accordingly.				
	Gunpowder, common ...	lb.	Rs. A. 0 5	} 10 per cent.	
	" sporting ...	lb.	1 0		
2	All other sorts ...	.....	<i>Ad valorem</i>		
	<i>Liquors</i> —				
	Ale, beer and porter, except when condensed or concentrated ...	Impl. Gallon or six quart bottles ...	.....	One anna.	
	Cider, and other fermented liquors ...	Ditto ...	.....	Rs. 4.	
	Liqueurs ...	.....	<i>Ad valorem</i>	5 per cent.	
	Spirit intended to be used exclusively in arts or manufactures, or in chemistry, and which has been rendered effectually and permanently unfit for human consumption ...	.....	<i>Ad valorem</i>	5 per cent.	
	Spirit, when used in drugs, medicines or chemicals in a proportion less than twenty per cent. of spirit of the strength of London proof ...	.....	<i>Ad valorem</i>	5 per cent.	
	Spirit when so used in a proportion of twenty per cent. and upwards ...	Impl. Gallon or six quart bottles of the strength of London proof.	.....	} Rs. 4, and the duty to be increased in proportion as the strength of the spirit exceeds London proof.	
	Spirit, perfumed, in wood, or in bottles containing more than four ounces ...	Ditto ...	.....		
	Spirit, other sorts ...	Ditto ...	.....		



No.	Names of Articles.	Per	Tariff valuation.	Rate of Duty.
	Wines—			
	Champagne and all other sparkling wines ...	Impl. gallon or six quart bottles.	.....	Rs. 2-8.
	All other sorts of wines ...	Ditto ...	.....	Re. 1.
3	OPIUM NOT COVERED BY A GOVERNMENT PASS ...	Ser of 80 tolas	.....	Rs. 24.
4	SALT ...	Indian maund of 82½ lbs. avoirdupois weight.	.....	The rate at which excise duty is for the time being leviable on salt manufactured in the place where the import takes place.

## SCHEDULE III.

## EXPORT TARIFF.

Name of Article.	Per	Tariff valuation.	Rate of Duty.
RICE whether husked or unhusked ...	Indian maund of 82½ lbs. avoirdupois weight.	...	3 annas.

R. J. CROSTHWAITE,  
*Offg. Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 10th March, 1882, and is hereby promulgated for general information:—

ACT No. XII OF 1882.

## THE INDIAN SALT ACT, 1882.

## CONTENTS.

## PREAMBLE.

## CHAPTER I.

## PRELIMINARY.

## SECTIONS.

1. Short title.  
Commencement.  
Local extent.  
Power to extend Act.
2. Repeal of enactments.
3. Interpretation-clause.
4. Powers of Commissioner of Division by whom to be exercised.
5. Commissioner of Northern India Salt-revenue.

## CHAPTER II.

## MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

6. Power of Governor General in Council—  
to regulate manufacture and refining of salt and saltpetre;  
to fix fees for licenses;  
to regulate the collection of duties;  
to regulate possession of salt in vicinity of places where saltpetre is manufactured;  
to regulate possession of salt in vicinity of places where salt is manufactured.

## CHAPTER III.

## DUTY AND PRICE OF SALT.

7. Power of Governor General in Council—  
to impose a duty on manufacture of salt;  
to reduce or remit duties;  
to fix minimum price of salt excavated, &c., by Government.
8. Power of Local Government to fix minimum price of salt excavated, &c.

## CHAPTER IV.

## OFFENCES AGAINST THE SALT-REVENUE.

## SECTIONS.

9. Penalties.
10. Punishment on second and subsequent convictions.
11. Charge by whom to be preferred.  
Limitation.  
Jurisdiction.
12. Confiscation of articles in respect of which offence committed.
13. Power to levy additional duty as penalty.
14. Punishment for connivance at offences mentioned in section nine.

## CHAPTER V.

## POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Power to search places where article is manufactured under license.
16. Power to detain suspected person and to seize goods liable to confiscation.
17. Power to arrest.
18. Procedure of officer having reason to believe unlawful manufacture.  
Power to enter and search.
19. Failure of Police-officer to attend.
20. Report of arrest, seizure and search.
21. Procedure in respect of articles seized.
22. Procedure on detention of article subject to additional duty.
23. Procedure in respect of person arrested.
24. Officers required to assist Salt-revenue officers.
25. Vexatious search, seizure, &c., by Salt-revenue officer.
26. Power to regulate seizures and disposal of things seized.

## CHAPTER VI.

## MISCELLANEOUS.

27. Power to prohibit import and transit of salt.
28. Further matters for which Governor General in Council may make rules.
29. Publication of rules.
30. Power to confer powers of Assistant Commissioner and Salt-revenue officers.
31. Amendment of Madras Act VI of 1871.

## THE SCHEDULE—ENACTMENTS REPEALED.

*An Act for regulating the duty on Salt, and for other purposes.*

WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt and saltpetre, into, over and in British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Salt Act," 1882;

Commencement.

and it shall come into force at once.

This section, sections two, seven and eight, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India;

Local extent.

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces and Ajmir and Mairwara, to the Province of Sindh, to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India;

and any portion of this Act, other than the portions specified in the second paragraph of this section,

Power to extend Act.

may be extended, by order of the Governor General in Council published in the *Gazette of India*, to any part of British India other than the territories, Province and Districts mentioned in the third paragraph of this section.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder.

Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends;

"Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;

"Salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a Salt-revenue officer under this Act;

"Saltpetre" includes rasi, sajjí and all other substances manufactured from saline earth, and khárit-nún and every form of sulphate or carbonate of soda; and

"manufacture of salt" includes the separation or purification of salt obtained in the manufacture of salt-petre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor General in Council may from time to time appoint in this behalf.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

6. The Governor General in Council may, from time to time, by rule—

(a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

(b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned:—

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining ...	50
License to manufacture saltpetre ...	2
License to manufacture sulphate of soda (khárit-nún) by solar heat in evaporating pans ...	10
License to manufacture sulphate of soda (khárit-nún) by artificial heat ...	2
License to manufacture other saline substances ...	2

(c) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;

(d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.



## CHAPTER III.

## DUTY AND PRICE OF SALT.

7. The Governor General in Council may from time to time by rule consistent with this Act—

(a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India;

(b) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted;

(c) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

8. Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold.

## CHAPTER IV.

## OFFENCES AGAINST THE SALT-REVENUE.

9. Whoever commits any of the following offences (namely):—

(a) does anything in contravention of this Act or of any rule made hereunder;

(b) evades payment of any duty or charge payable under this Act or any such rule; or

(c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (a) and (b) of this section,

shall for every such offence be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

10. Any person convicted of an offence under section nine, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875, or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section nine;

and every such person shall, upon every subsequent conviction of an offence under section nine, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

11. A charge of an offence under section nine, or under section 11 of the Inland Customs Act, 1875, shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue officer not inferior in rank to a Sub-Inspector,

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

12. All salt or saltpetre in respect of which any offence mentioned in section nine has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section nine has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

14. Any zamindár or other proprietor of land, and any agent of a zamindár or proprietor of land, who wilfully connives at any offence mentioned in section nine, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

#### CHAPTER V.

##### POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Any Salt-revenue officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

16. Any Salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section nine has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

17. Any Salt-revenue officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

18. Whenever any Salt-revenue officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (a) the name, residence, and calling of the informant (if any); (b) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored; (c) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored; and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the Police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him;

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which

there is reason to believe that salt or saltpetre is being so manufactured, refined or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

19. Any officer in charge of a Police-station who, on application in writing made by a Salt-revenue officer to attend for any of the purposes specified in section eighteen, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

20. Whenever a Salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person, or seizes any article as liable to confiscation under this Act, or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section eighteen shall report the same to his official superior.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all conveni-



ent despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section twelve.

If the article seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

**22** Any article in respect of which a penalty is imposed under section thirteen may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section:

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the Salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty the amount of which has been deposited under the second clause of this section is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

**23.** Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section twenty) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

**24.** All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue officers in the execution of this Act.

Vexatious search, seizure, &c., by Salt-revenue officer.

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

**26.** The Governor General in Council may from time to time make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

(a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

(b) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale;

(c) that the surplus-proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

## CHAPTER VI.

### MISCELLANEOUS.

**27.** The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

**28.** In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules consistent with this Act to regulate the following matters, namely:—

(a) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;



(b) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue officers under this Act shall be appealable ;

(c) the fee to be charged on account of any license, pass, certificate, dākhilā, rawāna or other such document issued under this Act ;

and generally to carry out the provisions herein contained.

29. All rules made under this Act shall be published in the *Gazette of India*, and shall thereupon have the force of law.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue officers.

31. For section 11 of the Madras Salt Excise Amendment of Madras Act, 1871, the following Act VI of 1871. shall be substituted :—

“ 11. The excise-duty on salt manufactured in any district, or part of a district, to which this Act may be extended, shall be paid under such orders as the Board of Revenue from time to time makes in this behalf ; but no such duty shall be leviable until the salt is about to be removed from the place of storage, and no salt shall be so removed without a permit authorizing its removal from store, and such permit shall specify the quantity to be removed and the excise-duty levied or due thereon.”

### SCHEDULE.

(See section 2.)

#### ENACTMENTS REPEALED.

##### ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VIII of 1875	The Inland Customs Act, 1875.	The whole.
II of 1876 ...	The Burma Land and Revenue Act, 1876.	Section 39, clause (b), and in clause (c) of the same section the words and letter “underclause (b).”
XVIII of 1877	The Salt Act, 1877	The whole.

#### REGULATION.

Number and year.	Short title.	Extent of repeal.
III of 1877	The Ajmir Laws Regulation, 1877.	Sections 36 and 37.

##### ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VII of 1864	The Salt Act, 1864	Section nine.

R. J. CROSTHWAITE,

*Offg. Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 10th March, 1882, and is hereby promulgated for general information:—

## ACT NO. XIII OF 1882.

*An Act to amend the law relating to Kánúngos and Patwáris in the North-Western Provinces and Oudh.*

WHEREAS it is expedient to amend, in manner hereinafter appearing, the law relating to Kánúngos and Patwáris in the North-Western Provinces; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Kánúngos and Patwáris Act, 1882;" and shall come into force at once.

Commencement.

2. Sections 29, 30 and 31 of the North-Western Provinces Land-Revenue Act, 1873, and sections 4 and 5 of the North-Western Provinces Land-Revenue Act, 1879, are hereby repealed.

Notwithstanding such repeal any landlord may recover from a tenant any rate, or any portion of a rate, accruing due before the thirtieth day of June, 1882, and which he is entitled to recover, under any rule made under section 29 of the said North-Western Provinces Land-Revenue Act, 1873, from such tenant.

3. The existing balance of the provincial fund constituted by section 29 of the said North-Western Provinces Land-Revenue Act, 1873, shall be disposed of in such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time direct.

4. For the purpose of preparing the registers or accounts prescribed by the said North-Western Provinces Land-Revenue Act, 1873, or by any rule made thereunder, every owner or occupier of land in any patwáris circle, and the agent of every such owner or occupier, shall furnish to the patwáris of such circle, the kánúngo or such

person as the Collector of the district may appoint in this behalf, such information, at such times, as the Local Government may from time to time by rule prescribe.

*Explanation.*—"Owner" in this section includes also a superior and an inferior proprietor, and a lessee, mortgagee or conditional vendee, in possession.

And whereas it is also expedient to amend the law relating to Kánúngos and Patwáris in Oudh; It is hereby further enacted as follows:—

5. Sections 203 to 215 (both inclusive) of the Oudh Land-Revenue Act, 1876, are hereby repealed; but all appointments and rules made under any of the said sections and now in force shall, so far as they are consistent herewith, be deemed to have been made hereunder.

6. With the previous sanction of the Chief Commissioner, the Deputy Commissioner shall fix the number of patwáris' circles in his district and the respective limits of such circles, and may, with the like sanction, from time to time alter the number and limits so fixed.

For each such circle the Deputy Commissioner shall appoint a patwáris.

7. The Chief Commissioner may, from time to time, make rules consistent with this Act—

(a) regulating the selection, appointment, suspension, dismissal, duties and supervision of patwáris;

(b) prescribing the fines which may be imposed on patwáris, and on persons appointed temporarily to perform their duties, for neglect of their duty.

8. Every kánúngo and patwáris, and every person appointed temporarily to perform the duties of any such officer, shall be deemed to be a public servant within the meaning of the Indian Penal Code,

and all official records and papers kept by any such officer or person shall be deemed to be public records and the property of Government.

9. For the purpose of preparing the registers or accounts prescribed by the said Oudh Land-Revenue Act, 1876, or by any rule made

thereunder, every owner or occupier of land in any patwari's circle, and the agent of every such owner or occupier, shall furnish to the patwari of such circle, the kanungo or such person as the Deputy Commissioner may appoint in this behalf, such information, at such times, as the Chief Commissioner may from time to time by rule prescribe.

*Explanation.*—"Owner" in this section includes also a superior and an inferior proprietor, and a lessee, mortgagee or conditional vendee, in possession.

10. No suit shall be brought by a landlord  
Suits for recovery of against a tenant for the  
patwari-cess barred. recovery of any cess or rate

accruing due after the thirtieth day of June, 1882, and payable, in money or in kind, by such tenant on account of the remuneration of a patwari.

11. Sections one and ten and this section extend  
Local extent. to the territories respectively  
administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh. Sections two, three and four extend to the territories administered by the said Lieutenant-Governor, and sections five to nine (both inclusive) extend to the territories administered by the said Chief Commissioner.

R. J. CROSTHWAITE,  
*Offg. Secy. to the Govt. of India.*



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 17th March, 1882, and is hereby promulgated for general information:—

ACT No. XIV OF 1882.

## THE CODE OF CIVIL PROCEDURE.

## CONTENTS.

## PREAMBLE.

## PRELIMINARY.

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1. Short title.
- Commencement.
- Local extent.
2. Interpretation-clause.
3. Enactments repealed.
- References in previous Acts.
- Saving of procedure in suits instituted before 1st June, 1882.
- Appeals pending on 29th July, 1879.
4. Saving of certain Acts affecting Central Provinces, Burma, Panjāb and Oudh.
5. Sections extending to Provincial Small Cause Courts.
6. Saving of jurisdiction and procedure—
  - (a) of Military Courts of Request;
  - (b) of officers appointed to try small suits in Bombay;
  - (c) of Village Munsifs and Village Panchāyats in Madras;
  - (d) of Recorder of Rangoon sitting as Insolvent Court.
7. Saving of certain Bombay laws.
8. Presidency Small Cause Courts.
9. Division of Code.

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- 648. Procedure when person to be arrested or property to be attached is outside district.
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**THE FIRST SCHEDULE.**—Acts repealed.

**THE SECOND SCHEDULE.**—Chapters and sections of this Code extending to Provincial Courts of Small Causes.

**THE THIRD SCHEDULE.**—Bombay Enactments.

**THE FOURTH SCHEDULE.**—Forms of Pleadings and Decrees.

*An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.*

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

#### PRELIMINARY.

1. This Act may be cited as "The Code of Civil Procedure;" and it shall come into force on the first day of June, 1882.

This section and section 3 extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874.

2. In this Act, unless there be something repugnant in the subject or context—

"chapter:" "chapter" means a chapter of this Code:  
 "district:" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

"pleader:" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court:

"Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader:

"Collector:" means every officer performing the duties of a Collector of land-revenue:

"decree:" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition:

"order:" means the formal expression of any decision of a Civil Court which is not a decree as above defined:

"judgment" means the statement given by the Judge of the grounds of a decree or order:

"Judge:" means the presiding officer of a Court:

"judgment-debtor" means any person against whom a decree or order has been made:

"decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred:

"written" includes printed and lithographed, and "writing" includes print and lithography:

"signed" includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to:

"foreign Court" means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor General in Council:

"foreign judgment" means the judgment of a foreign Court:

"public officer" means a person falling under any of the following descriptions (namely):—

every Judge;  
 every covenanted servant of Her Majesty;  
 every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any



document relating to the pecuniary interests of Government; or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the 'Code of Civil Procedure,' or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under section 320, and every notification published before the same day, purporting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865:

The Burma Courts Act, 1875:

The Panjáb Courts Act, 1877:

The Oudh Civil Courts Act, 1879:

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall for the purposes of this Code be deemed to be the District Court.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request; (a) of Military Courts of Request;

(b) of a single officer duly appointed in the Presidency of Bombay to try small suits in military bázars at cantonments and stations occupied by the troops of that Presidency; or

(c) of Village Munsifs or Village Pancháyats under the provisions of the Madras Code;

(c) of Village Munsifs and Village Pancháyats in Madras;

(d) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab or Bassein,

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. With respect to

(a) the jurisdiction exercised by certain jágírdárs Saving of certain and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act XV of 1840 in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and chapter XXXIX, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any

such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

9. This Code is divided into ten Parts as follows:—

The first Part:	Suits in General.
The second Part:	Incidental Proceedings.
The third Part:	Suits in particular Cases.
The fourth Part:	Provisional Remedies.
The fifth Part:	Special Proceedings.
The sixth Part:	Appeals.
The seventh Part:	Reference to and Revision by the High Court.
The eighth Part:	Review of Judgment.
The ninth Part:	Special Rules relating to the Chartered High Courts.
The tenth Part:	Certain Miscellaneous Matters.

## PART I. OF SUITS IN GENERAL.

### CHAPTER I.

#### OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before Her Majesty in Council.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

*Explanation I.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation II.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation III.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

*Explanation IV.*—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

*Explanation V.*—Where persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

*Explanation VI.*—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India. 14. No foreign judgment shall operate as a bar to a suit in British India—

(a) if it has not been given on the merits of the case:

(b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

(c) if it is in the opinion of the Court before which it is produced contrary to natural justice:

(d) if it has been obtained by fraud:

(e) if it sustains a claim founded on a breach of any law in force in British India.

### CHAPTER II.

#### OF THE PLACE OF SUING.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.



Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immoveable property,
- (b) for the partition of immoveable property,
- (c) for the foreclosure or redemption of a mortgage of immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

*Explanation.*—In this section 'property' means property situate in British India.

17. Subject to the limitations aforesaid, all other

Suits to be instituted where defendants reside or cause of action arose. suits shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the cause of action arises, or
- (b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or
- (c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation II.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

#### Illustrations.

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta, and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory-note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

#### Illustrations.

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(c) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.



Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaintiff shall not be chargeable with any court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaintiff has been returned by such Court.

22. Where a suit may be instituted in more than one Court, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

23. Where Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

24. Where Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

And such High Court shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire

to be heard, or of its own motion without giving such notice, withdraw any suit whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

### CHAPTER III.

#### OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

27. Where a suit has been instituted in the name of the wrong person or add plaintiff for or to as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

30. Where there are numerous parties having the same interest in one suit, one party may sue or defend on behalf of all in same interest. one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out ;

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

All parties whose names are so added as defendants shall be served with a summons in manner herein-after mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner

as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing ; and any such objection not so taken shall be deemed to have been waived by the defendant.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding under this Code : and in like manner when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any such proceeding.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

#### *Recognized Agents and Pleadors.*

36. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf :

Provided that any such appearance shall be made by the party in person, if the Court so direct.

37. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;

(b) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs ;

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters con-

needed with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Nothing in the former part of this section applies to the territories now administered respectively by the Panjáb, Oudh and Central Provinces. Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may from time to time, by notification in the official Gazette, declare in this behalf.

38. Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in court.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in court.

## CHAPTER IV.

### OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

#### Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

44. Rule a.—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of land, recovery of immovable property, or to obtain a declaration of title to immovable property, except—

(a) claims in respect of mesne profits or arrears of rent in respect of the property claimed,

(b) damages for breach of any contract under which the property or any part thereof is held, and

(c) claims by a mortgagee to enforce any of his remedies under the mortgage.

Rule b.—No claim by or against an executor, administrator or heir as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

45. Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action.



against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

## CHAPTER V.

### OF THE INSTITUTION OF SUITS.

48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

Suits to be commenced by plaint.

49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in court.

Particulars to be contained in plaint.

50. The plaint must contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(e) a demand of the relief which the plaintiff claims; and

(f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaint should shew, not only that he has an actual existing interest in the subject-matter but that he has taken the steps necessary to enable him to institute a suit concerning it.

#### Illustrations.

(a) A sues as B's executor. The plaint must state that A has proved B's will.

(b) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(c) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

The plaint must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

#### Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must shew the ground upon which exemption from such law is claimed.

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

Provided that if the plaintiff is, by reason of absence or for other good cause, unable to sign

the plaint, it may be signed by any person duly authorized by him in this behalf.

**52.** The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Verification to be signed and attested. The verification shall be signed by the person making it.

**53.** The plaint may, at the discretion of the Court and at or before the first hearing, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

(a) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(b) if it contains any particulars other than those so required; or

(c) if it is not signed and verified as hereinbefore required; or

(d) if it does not disclose a cause of action; or  
(e) if it is not framed in accordance with section 42; or

(f) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit:

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

When a plaint is amended, the amendment shall be attested by the signature of the Judge.

When plaint shall be rejected. **54.** The plaint shall be rejected in the following cases:—

(a) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(c) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

(d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

**55.** When a plaint is rejected, the Judge shall Procedure on rejecting plaint. record with his own hand an order to that effect with the reason for such order.

**56.** The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When plaint shall be returned to be presented to proper Court. **57.** The plaint shall be returned to be presented to the proper Court in the following cases:

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented:

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

On returning a plaint, the Judge shall, with Procedure on returning plaint. his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

**58.** The plaintiff shall endorse on the plaint, or Procedure on admitting plaint. annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

The Court shall also cause the particulars mentioned in section 50 to be Register of suits. entered in a book to be kept

for the purpose and called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct, shall return the book to the plaintiff and cause the copy to be filed.

63. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

## CHAPTER VI.

### OF THE ISSUE AND SERVICE OF SUMMONS.

#### Issue of Summons.

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

67. No party shall be ordered to appear in person unless he resides

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty, or, where there is railway, 200 miles, or, where there is way-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary



for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

*Service of Summons.*

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

74. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

77. In a suit to obtain relief respecting, or compensation for wrong to, immovable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

78. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

*Explanation.*—A servant is not a member of the family within the meaning of this section.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

80. If the defendant or other person refuses to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, the time when and the manner in which the summons was served.

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and

also upon some conspicuous part of the house, if any; in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

**83.** The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

**84.** Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

**85.** If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

**86.** Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

**87.** If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

**88.** If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons

to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

**89.** If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

**90.** If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

**91.** The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

**92.** When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

#### *Service of Process.*

**93.** Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

**94.** All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

*Postage.*

95. Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded :

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

## CHAPTER VII.

## OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed :

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit ; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court may restore the suit to its file, may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

99A. If, after a summons has, whether before or after the first day of June, 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

100. If the plaintiff appears and the defendant does not appear, the procedure shall be as follows :

Procedure if only plaintiff appears, when summons duly served, (a) if it is proved that the summons was duly served, the Court may proceed *ex parte* :

when summons not duly served, (b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant :

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

102. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside ; and, if it be proved that he was prevented by any

Decree against plaintiff by default bars fresh suit.



sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

**104.** If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

**105.** If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

**106.** If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

**107.** If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

#### *Of setting aside Decrees ex parte.*

**108.** In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside ;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

**109.** No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

### CHAPTER VIII.

#### OF WRITTEN STATEMENTS AND SET-OFF.

**110.** The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record.

**111.** If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaintiff in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim ; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

#### *Illustrations.*

(a) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership-firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same:

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

When any amendment is made under this section, the Judge shall attest it by his signature.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

## CHAPTER IX.

### OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or by pleader, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

## CHAPTER X.

### OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

121. Any party may at any time by leave of the Court deliver through the Court interrogatories in

statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record:

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry, and shall then return the book to the person producing it.

All documents produced at the first hearing and not so proved or admitted shall be returned to the parties respectively producing them.

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

and returned.

The document shall then be returned to the party who produced it.

143. Notwithstanding anything contained in sections 62, 141 and 142, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

144. In suits in which an appeal is not allowed, when the suit has been dismissed in evidence may be returned. posed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same:

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

## CHAPTER XI.

### OF THE SETTLEMENT OF ISSUES.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (a) issues of fact, (b) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

147. The Court may frame the issues from all allegations from which or any of the following issues may be framed, materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

(b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

148. If the Court be of opinion that the issues cannot be correctly framed Court may examine witnesses or documents without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attend-



ance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

149. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

151. If the Court be satisfied, after making such inquiry as it deems proper, Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

## CHAPTER XII.

### DISPOSAL OF THE SUIT AT THE FIRST HEARING.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or fact,

or of fact, the Court may at once pronounce judgment.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

155. If the summons has been issued for the final disposal of the suit, and either party fails to produce his evidence, or either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

## CHAPTER XIII.

### OF ADJOURNMENTS.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

157. If, on any day to which the hearing of the suit is adjourned, the parties fail to appear on day or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

#### CHAPTER XIV.

##### OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such

further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

163. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service:

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if

the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

*Explanation.*—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.



176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distant from the Court-house.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

#### CHAPTER XV.

##### OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

*Explanation.*—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

180. The other party shall then state his case and produce his evidence (if any).

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the

evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

181. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken in appealable cases, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when complete, shall be read over in the presence of the Judge, and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

186. The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

189. In cases in which an appeal is not allowed, Memorandum of evi- it shall not be necessary to dence in unappealable take down the evidence of cases. the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

190. If the Judge be rendered unable to make Judge unable to make a memorandum as above such memorandum to re- required by this chapter, he cord reason of his in- shall cause the reason of such ability. inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

191. Where the Judge taking down any evi- Power to deal with dence, or causing any memo- evidence taken down by randum to be made under Judge removed before this chapter, dies or is re- conclusion of suit. moved from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

192. If a witness be about to leave the jurisdic- Power to examine wit- tion of the Court, or if other ness immediately. sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner herein-before provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may at any stage of the suit Court may recall and recall any witness who has examine witness. been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

## CHAPTER XVI.

### OF AFFIDAVITS.

194. Any Court of first instance and any appel- Power to order any late Court may at any time point to be proved by affidavit. for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

195. Upon any application evidence may be Power to order at- given by affidavit, but the tendence of declarant for Court may at the instance of either party order the cross-examination. of attendance for cross-examination of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code from personal appearance in court, or the Court otherwise directs.

196. Affidavits shall be confined to such facts as Matters to which affi- the declarant is able of his davis shall be confined. own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of declarant by whom to be administered. 197. In the case of any affidavit under this Code—  
(a) any Court or Magistrate, or

(b) any officer whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

## CHAPTER XVII.

### OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been Judgment when pro- duly taken and the parties nounced. have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor. 199. A Judge may pronounce a judgment written by his predecessor but not pronounced.

200. The judgment shall be written in the Language of judg- language of the Court, or ment. in English, or in the Judge's mother-tongue.

201. Whenever the judgment is written in any Translation of judg- language other than that of ment. the Court, the judgment shall, if any of the parties so

require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

**202.** The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

**203.** The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

**204.** In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

**205.** The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

**206.** The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

**207.** When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

**208.** When the suit is for moveable property, if the decree be for the delivery of such property, it

shall also state the amount of money to be paid as an alternative if delivery cannot be had.

**209.** When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

**210.** In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

And after the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

**211.** When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

*Explanation.*—'Mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

**212.** When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

**213.** When the suit is for an account of any property and for its due administration under the de-



decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Applications under section 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section.

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not herein-before provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

## CHAPTER XVIII.

### OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

## CHAPTER XIX.

### OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

229. A decree of any Court established by the authority of the Governor General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

#### B.—Of Application for Execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of

twelve years from any of the following dates (namely) —

(a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

**231.** If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**232.** If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided as follows:—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

**233.** Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

**234.** If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

**235.** The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely)—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (h) the amount of costs, if any, awarded;
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

**236.** Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

**237.** Whenever an application is made for the attachment of any immovable property belonging to the judgment-debtor, it shall contain at the foot a de-



scription of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

**238.** If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

When application must be accompanied by extract from Collector's register.

#### C.—Of staying Execution.

**239.** The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

**240.** Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

**241.** No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

**242.** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

**243.** If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court

Stay of execution pending suit between decree-holder and judgment-debtor.

may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

#### D.—Questions for Court executing Decree.

**244.** The following questions shall be determined by order of the Court by separate suit (namely) —

(a) questions regarding the amount of any mesne profits as to which the decree has directed inquiry;

(b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

#### E.—Of the Mode of executing Decrees.

**245.** The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

**246.** If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Procedure on admitting application.

Cross-decrees.

*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

*Explanation II.*—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

*Explanation III.*—This section does not apply unless

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

#### Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against

the same person the Court has ordered execution to issue against him.

*Explanation.*—In this section the phrase "the Court" means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property:

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

257. All money payable under a decree shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257 A, the decree holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.



If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

**261.** If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered :

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

**262.** The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form: "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

**263.** If the decree be for the delivery of any immovable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

**264.** If the decree be for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order

delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property :

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

**265.** If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

#### F.—Of Attachment of Property.

**266.** The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) the necessary wearing apparel of the judgment-debtor, his wife and children ;
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists ;
- (d) books of account ;
- (e) mere rights to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;
- (h) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount ;

- (i) the pay and allowances of persons to whom the Native Articles of War apply;
- (j) the wages of labourers and domestic servants;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (l) a right to future maintenance.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i) and (j) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed

- (a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or
- (b) to affect the Army Act, 1881, or any similar law for the time being in force.

**267.** The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

**268.** In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

**269.** If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

The Local Government may from time to time make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

**270.** If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to the further orders of the Court.

**271.** No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Provided that, if the room be in the actual occupancy of a woman, who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to with-

draw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

**272.** If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

**273.** If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

**274.** If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

**275.** If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

**276.** When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

**277.** If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

**278.** If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.



If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

**279.** The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

**280.** If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

**281.** If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

**282.** If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

**283.** The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

**284.** Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

**285.** Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court

of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

#### *G.—Of Sale and Delivery of Property.*

##### *(a) General Rules.*

**286.** Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

**287.** When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

**288.** No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

**289.** The proclamation shall be made, in manner prescribed by section 274, on the spot where the property

is attached, and a copy thereof shall then be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

**290.** Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale.

**291.** The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Stoppage of sale on tender of debt and costs, or on proof of payment. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

**292.** No officer having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

**293.** The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

**294.** No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

**295.** Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided as follows:—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;  
secondly, in discharging the interest and principal-money due on the incumbrance;  
thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(b) *Rules as to Moveable Property.*

**296.** If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

**297.** In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

**298.** No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

**299.** When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

**300.** When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

**301.** When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

**302.** If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (or as the case may be); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

**303.** In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c) *Rules as to Immoveable Property.*

**304.** Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

**305.** When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into court and not to the judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

**306.** On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit,



the property shall forthwith be put up again and sold.

**307.** The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

**308.** In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

**309.** Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period herebefore prescribed for the sale.

**310.** When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

**311.** The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

**312.** If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

**313.** The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make

such order as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

**314.** No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

**315.** When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

**316.** When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date.

**317.** No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

**318.** When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

**319.** When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

**320.** The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector, and rescind or modify any such declaration.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court.

**321.** When the execution of a decree has been so transferred, the Collector may—

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

**322.** When the execution of a decree, not being a decree ordering the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided.

**322A.** In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution

by sale of his immovable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

**322B.** Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immovable property, and may from time to time adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immovable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

**322C.** The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immovable property so far as they are known to the Collector or appear in the records of his office, and forward



such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

**322D.** The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

**323.** Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to

such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-authority.

**324.** If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

**324A.** The Collector shall from time to time render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtors's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;



and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

**325.** When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot ;
- (b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment ;
- (c) buy in the property offered for sale, and resell the same by public auction or private contract, as he thinks fit.

**325A.** So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any civil Court issue any process against such property or part in execution of a decree for money.

During the same period no civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

**325B.** When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

**325C.** In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a civil Court to compel the attendance of parties and witnesses and the production of documents.

**326.** When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is

objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

**327.** The Local Government may from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value :

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may from time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

#### *H.—Of Resistance to Execution.*

**328.** If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

**329.** If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

**330.** If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may

extend to thirty days, and direct that the decree-holder be put into possession of the property.

**331.** If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

**332.** If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

**333.** Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

**334.** If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

**335.** If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

#### I.—Of Arrest and Imprisonment.

**336.** A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Provided as follows:—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer

arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest:

But if he fails so to apply, the Court may either direct the security to be realised or commit him to jail in execution of the decree.

In the case of a surety such security may be realised in manner provided by section 253.

**337.** Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

**338.** The Local Government may from time to time prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

**339.** No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

**340.** Sums disbursed by the decree-holder for Subsistence-money to the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

Release of judgment-debtor. **341.** The judgment-debtor shall be discharged from jail,

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled:

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

**342.** No person shall be imprisoned in execution of a decree for a longer period than six months;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

**343.** The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

## CHAPTER XX.

### OF INSOLVENT JUDGMENT-DEBTORS.

**344.** Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of



attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

**345.** The application, when made by the judgment-debtor, shall set forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(b) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to put it at the disposal of the Court;

(e) the amount and particulars of all pecuniary claims against him; and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

**346.** The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

**347.** The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application;

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under

this section if satisfied that he is unable to make them.

**348.** The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

**349.** Where the judgment-debtor is under arrest, the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

**350.** On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

**351.** If the Court is satisfied—

(a) that the statements in the application are substantially true;

(b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent,

If the Court is not so satisfied, it shall make an order rejecting the application.

**352.** The creditors mentioned in the application.

and the other persons (it being proved that they are creditors of the insolvent, shall then produce evidence of the amount and

particulars of their respective pecuniary claims against him; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

**353.** Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

**354.** Every order under section 351 shall be published in the local official Gazette and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

**355.** The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid;

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

**356.** The Receiver shall proceed under the direction of the Court—

- (a) to convert the property into money:
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government:

(c) to pay the said decree-holder's costs:

(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property:

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference,

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative:

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

**357.** An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

**358.** If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

359. Whenever, at the hearing under section 350, it is proved that the applicant has

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma.

## PART II.

### OF INCIDENTAL PROCEEDINGS.

#### CHAPTER XXI.

##### OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

##### Illustrations.

(a) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the right to sue survives to C, and the suit does not abate.

(b) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(d) A, a member of a Hindú joint family under the Mitáksharā law, institutes a suit for partition of the family property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

362. If there be more plaintiffs or defendants

Procedure in case of death of one of several plaintiffs or defendants, if right to sue survive.

than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

363. If there be more plaintiffs than one, and

Procedure in case of death of one of several plaintiffs where right to sue survives to survivors and representative of deceased.

any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

364. If within the time limited by law no ap-

Procedure where no application made by representative of deceased plaintiff.

plication be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

365. In case of the death of a sole plaintiff or

Procedure in case of death of sole, or sole surviving, plaintiff.

sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

366. If within the time limited by law no such

Abatement where no application by representative of deceased plaintiff.

application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal re-



representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

*Explanation.*—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

**367.** If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

**368.** If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

**369.** The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may,

with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

**370.** The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

**371.** When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

**372.** In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to or in substitution for the person from whom it has passed, as the case may require.

## CHAPTER XXII.

### OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

**373.** If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

**374.** In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

**375.** If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction.

#### CHAPTER XXIII.

##### OF PAYMENT INTO COURT.

**376.** The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

**377.** Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

**378.** No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

**379.** If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall

pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

##### Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

#### CHAPTER XXIV.

##### OF REQUIRING SECURITY FOR COSTS.

**380.** If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

**381.** In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

**382.** Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

#### CHAPTER XXV.

##### OF COMMISSIONS.

##### A.—Commissions to examine Witnesses.

**383.** Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident with-